IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8488 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANJULABEN WIDOW OF CHANDRAKANTBHAI SHANTILAL
Versus
DIRECTOR OF PENSION AND PROVIDENT FUND

Appearance:
1. Special Civil Application No. 8488 of 2004
MR PK JANI for Petitioner No. 1
MS. REETA CHANDARANA, ASSTT.GOVERNMENT PLEADER for Respondent No. 1
MR HS MUNSHAW for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 25/10/2004

ORAL JUDGEMENT

Learned Advocate for the petitioner seeks permission to delete respondents Nos. 3 and 4. Permission granted. Respondents Nos. 3 and 4 stand deleted.

2. Rule. Ms. Reeta Chandarana, learned AGP and Mr. H.S.Munshaw, learned Advocate waive service of notice of rule for respondents Nos. 1 and 2 respectively. At the joint request of learned Counsel for the parties, the petition is taken up for final disposal today.

3. In the present petition, the petitioner has contended that her husband late Shri Chandrakantbhai Acharya was working in the Roads and Buildings Department and after pensionable service he retired with effect from 31st October, 1987. Shri Chandrakantbhai Acharya was also getting pension from the respondents. It is the case of the petitioner that her husband Chandrakantbhai Acharya expired on 30.1.2004. On account of the death of her husband, the petitioner claimed the family pension from the respondents.

4. It is the case of the petitioner that she had married said Shri Acharya in the year 1957 and also had a daughter from her marriage with Chandrakantbhai. However, he later on deserted the petitioner and her daughter. The petitioner has stated that the petitioner had taken out proceedings for maintenance against her late husband and the learned Chief Judicial Magistrate, Patan had in fact passed an order granting maintenance to the petitioner, which was later on increased to Rs. 1300/- per month. It is the case of the petitioner that the said order came to be passed after hearing both sides on 30.6.2003. The petitioner has stated that till the death of her husband on 30.1.2004, the marriage subsisted and that therefore, upon death of her husband, she would be entitled to receive family pension from the respondents.

5. Appearing for the petitioner learned Counsel Mr. P.K.Jani has submitted that in the proceedings before the learned Chief Judicial Magistrate, Patan, Shri Chandrakantbhai Acharya was a party respondent and had never raised any contention regarding subsistence of the marriage with the petitioner. In that view of the matter, the authority ought to have granted family pension to the petitioner.

6. The respondent No.2 has filed an affidavit-in-reply, in which it is broadly contended that the service records of the deceased Government servant Chandrakantbhai Acharya did not reflect the name of the petitioner as his wife, nor did the records indicate any other family members and therefore, the family pension papers of the petitioner were not prepared.

7. Appearing for the respondent No.1, learned AGP has submitted that for want of any family pension papers from the respondent No.2, respondent No.1 has not taken any further steps to pay family pension to the petitioner.

8. Having considered the material on record and the submissions made on behalf of the parties, it appears that the petitioner's name was not reflected as wife of the deceased Government servant in the service book of the deceased. This might have been on account of strained relations between the petitioner and her late husband. There however does not appear to be any serious dispute raised by late Shri Chandrakantbhai Acharya also that the petitioner is his wife and the marriage subsisted all through out. If this be the case, the petitioner would be entitled to receive the family pension from the respondents notwithstanding the strained relations between the petitioner and her late husband. The respondents also however, cannot be faulted with since late Chandrakantbhai Acharya had not supplied any details of the members of his family. In view of the material placed by the petitioner on record, however it will be necessary for the respondent No.2 to examine the case of the petitioner to receive family pension. For the above purpose, I direct the petitioner to apply to the respondent No.2 with all necessary materials available with her in support of her contention that she is wife of deceased Government servant Shri Chandrakantbhai Acharya. Upon receipt of the materials, the respondent No.2 shall process her family pension papers and forward the same to the respondent No.1 as expeditiously as possible, preferably within a period of two months from the date of receipt of such documents. Needless to say that this exercise shall be undertaken in consonance with the provisions contained under Rule 91 of the Gujarat Civil Service Pension Rules, read with Rule 95(5) of the said Rules. The respondent No.1 upon receipt of the family pension papers from the respondent No.2 as mentioned above, shall process the pension entitlement of the petitioner keeping in mind the above provisions and pay the same to her, if found due and payable, including the arrears calculated so far. The above exercise may be completed within a further period of 2 months from the date of receipt of the pension papers by the respondent No.1 from the respondent No.2.

With the above directions, the petition is partly allowed. Rule is made absolute to the above extent with no order as to costs. Direct service permitted.

(Akil Kureshi, J.)

*/Mohandas